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FEDERAL MARITIME COMM

**TraPac – SSA Cooper Terminal Discussion Agreement**

**Between**

**TraPac, Inc.**

**and**

**SSA Cooper, LLC**

FMC Agreement No. 012491

**A Marine Terminal Discussion Agreement**

**Expiration: None**

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This Agreement is entered into this 1<sup>st</sup> day of September 2017 between TraPac, Inc. and SSA Cooper, LLC (hereinafter referred to individually as a “Party” and jointly as the “Parties”).

### **WITNESSETH THAT**

WHEREAS, each of the Parties hereto is a private marine terminal operator which owns or operates marine terminal facilities at the Port of Jacksonville, which provide marine terminal services to ocean common carriers; and

WHEREAS, the Parties have common interests in facilitating the efficient movement of cargo through ports in Jacksonville and believe that through discussion and agreement between themselves they can enhance their efficiency and operations to benefit their respective customers.

NOW, THEREFORE, in consideration of the mutual undertakings by the Parties, it is hereby agreed as follows:

#### **ARTICLE 1. NAME OF AGREEMENT**

This Agreement shall be referred to as the “TraPac – SSA Cooper Marine Terminal Discussion Agreement” (the “Agreement”).

#### **ARTICLE 2. PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to promote the most efficient use of the assets and personnel of the Parties by permitting them to meet, discuss, exchange information and negotiate the terms of proposed agreements regarding their respective operations, facilities and services at the Port of Jacksonville (the “Port”). This Agreement will permit the Parties to consider and discuss two options: (1) the possible formation of a new entity, or (2) possible cooperation within their existing company structures with the ultimate goal of improving service, reducing costs, increasing efficiency and otherwise optimizing conditions at the Port to better serve the interests of the shipping public at the Port.

#### **ARTICLE 3. PARTIES TO THE AGREEMENT**

The Parties to this Agreement are: (1) TraPac Inc., 9834 New Berlin Road, Jacksonville, Florida 32226; and (2) SSA Cooper, LLC, 131 SW Klickitat Way, Seattle, Washington 98134. Both Parties are Marine Terminal Operators as defined in 46 U.S.C. § 40102(14).

Additional Parties may be added to this Agreement by unanimous vote of all current Parties. Any new membership will be reflected in an amendment to this Agreement filed with the Federal Maritime Commission (“FMC”), and the membership of the new Party shall not

become effective unless and until said amendment becomes effective under the Shipping Act of 1984, as amended (“Shipping Act”).

#### **ARTICLE 4. GEOGRAPHIC SCOPE OF THE AGREEMENT**

The geographic scope of this Agreement is the areas in and around the ports in Jacksonville, Florida, including the Port and the Parties’ activities at their respective marine terminal facilities which handle cargo transported in the foreign commerce of the United States.

#### **ARTICLE 5. AGREEMENT AUTHORITY**

5.1 The Parties are authorized to meet, discuss, collect, maintain and exchange information, whether past, current or anticipated, including records, statistics, studies, data, and documents, whether prepared by the parties or obtained from outside sources, and negotiate tentative agreements (subject to the filing and waiting requirements of the Shipping Act) on matters relating to the following:

- a. The formation, capitalization, management and operation of one or more separate entities, owned by Parties or their affiliated entities, that would own, lease or operate marine terminal facilities at the Port and provide marine terminal services to ocean common carriers. Such entity or entities could operate in place of, or in conjunction with, the Parties; and
- b. As an alternative to formation of one or more entities as referred to in Article 5.1(a) above, cooperation between the Parties within their existing company structures on the subjects set forth in subsections (1) through (6) below:
  - (1) Joint or individual acquisition and/or leasing of real and personal property;
  - (2) The nature, type and capacity of, and marketing of, marine terminal facilities in the Jacksonville area, provided that this subsection 5.1(b)(2) does not cover or permit the Parties to discuss or exchange information on rates charged to ocean carriers (whether by tariff or by marine terminal services agreements);
  - (3) The development or improvement of port infrastructure, including public highway, pipeline and rail access to their respective facilities in the Jacksonville area;
  - (4) Consolidation of, and space sharing at, the Parties’ facilities in the Jacksonville area so as to reduce the cost and increase the efficiency of operating and managing their respective facilities, operation of cranes, wharves, berths, gate facilities, maintenance buildings and administrative facilities and offices;

(5) Cargo handling practices and terms, cargo handling areas, the operation of gates, terms and conditions of gate access to the Parties' facilities, development of one or more common facilities for the repair and storage of chassis and a system for monitoring the exit and entry of such chassis from those facilities, efficient use of the wharves and berths, terminal utilization levels, hours of operation, turn times, appointment systems, staffing, technology, architecture and infrastructure improvements; and

(6) Future facility and equipment requirements, capacity and development at the Port.

5.2 All of the activities authorized hereunder shall be voluntary and non-binding.

5.3 Nothing herein is intended to permit the parties to implement any agreement reached hereunder or to take any joint action. The parties understand that any agreements or joint actions they may desire to implement, if subject to the jurisdiction of the FMC, shall be filed with the FMC and shall become effective in accordance with the provisions of the Shipping Act and applicable FMC regulations.

5.4 The Parties are authorized to meet, individually or as a group, with one or more users (including, without limitation, inland carriers, ocean common carriers and/or intermediaries), federal, state and local government agency officials, the Jacksonville Port Authority, equipment manufacturers, and equipment providers to discuss and reach tentative agreement (subject to FMC filing) on any of the matters set forth in Article 5.1 above.

5.5 The Parties may hire and retain consultants, or contractors to carry out any matters or responsibilities discussed, established or agreed to under this Agreement, subject to the involved Parties' agreement regarding costs in connection with such hiring.

## **ARTICLE 6. MEETINGS AND ADMINISTRATIVE MATTERS**

6.1 This Agreement shall be administered by the Parties and/or their duly authorized representatives. The activities authorized in this Agreement may be carried out through meetings, telephone communications, video conferences, electronic mail or other electronic communications, writings and such other means of communications as the Parties may deem appropriate. The Parties may establish such standing, advisory, and ad hoc committees as they deem desirable for the furtherance of the purposes of this Agreement and such committees shall meet as necessary to accomplish their assignments.

6.2 Each Party shall bear its own expenses for travel to and attendance at meetings. General expenses for meetings and other agreement expenses, including, but not limited to, legal and regulatory expenses, shall be apportioned by the Parties on such terms as they may from time to time agree.

## **ARTICLE 7. VOTING**

Except as otherwise provided herein, decisions hereunder shall be reached by the unanimous agreement of the Parties. Voting on any matter may be accomplished by voice vote at a meeting, by telephone polls, by facsimile, by electronic communications, and by such other means as the Parties may deem appropriate.

## **ARTICLE 8. EFFECTIVE DATE DURATION AND WITHDRAWAL**

8.1 This Agreement shall become effective as of the date it becomes effective under the Shipping Act.

8.2 This Agreement shall continue in effect indefinitely and may be terminated by mutual agreement of the Parties. Prompt notice of termination will be provided to the Federal Maritime Commission. Termination of this Agreement will become effective when an amendment to this Agreement regarding termination becomes effective under the Shipping Act.

8.3 Any Party may unilaterally withdraw from this Agreement at any time upon thirty (30) days prior written notice to all other Parties. A withdrawing Party shall remain liable for its share of agreement expenses incurred prior to the date of withdrawal, and a Parties' withdrawal will become effective when an amendment to this Agreement regarding withdrawal becomes effective under the Shipping Act.

## **ARTICLE 9. AMENDMENTS**

This Agreement may be amended by mutual agreement of all the parties. No amendment shall take effect unless it is in writing, signed by the parties and has been filed with the Federal Maritime Commission and become effective under the Shipping Act.

## **ARTICLE 10. LAW AND ARBITRATION**

10.1 This Agreement shall be governed by and construed in accordance with U.S. maritime law, including the Shipping Act, codified at 46 U.S.C. § 40101 et seq., and where U.S. maritime law is silent on a question, the laws of the State of Florida, without regard to provisions regarding conflicts of law.

10.2 Except as the Parties to a particular dispute may otherwise agree, any dispute or difference arising out of or in connection with this Agreement that cannot be amicably resolved between or among any Parties shall in all cases be referred for resolution to a single arbitrator in Jacksonville familiar with corporate and/or maritime matters, and the type of business conducted by the parties, who shall have no financial or personal interest whatsoever in or with any Party and shall not have acquired a detailed prior knowledge of the matter in dispute. The arbitrator shall be appointed by the mutual agreement of the parties to the arbitration or, failing such agreement and upon application by any party to the arbitration, by the American Arbitration Association ("AAA"). The arbitration will be conducted pursuant to the commercial arbitration



rules of the AAA. Except by agreement of the parties to the dispute, discovery shall be limited to the production of discoverable documents and the arbitrator shall have the power to subpoena same.

The arbitrator's decision, including the written findings of fact and conclusions, shall be final and conclusive; judgment may be entered on the award and the award shall be enforceable in any court of competent jurisdiction; the arbitrator may allocate the cost of arbitration to one or more participating Parties in a manner consistent with the award; the arbitrator may not award exemplary or punitive damages.

#### **ARTICLE 11. NON-ASSIGNMENT**

Except as otherwise unanimously agreed in writing by the Parties, no Party shall assign its rights or delegate its obligations under or pursuant to this Agreement to any other person or entity.

#### **ARTICLE 12. CONFIDENTIALITY**

The Parties agree that information exchanged under this Agreement may contain non-public, confidential business information and trade secrets. The Parties shall treat all information exchanged hereunder, whether in oral or written form, as confidential. The Parties recognize that such confidentiality may be limited by legal requirements applicable to each individual party under federal, state or local statutory requirements or if required by subpoena. The Parties also agree that such information is not confidential if it is already publicly available or if it was obtained from a third party who did not violate any confidentiality obligation to any Party hereto. The Parties further agree not to make any public statements or issue any press releases relating to the subject of this Agreement without the written consent of all of the Parties. Unless otherwise agreed in writing, the confidentiality obligations contained in this Agreement shall terminate upon the later of (i) the termination of this Agreement or (ii) three (3) years from the date the confidential information came into the possession of the Party which received such information.

#### **ARTICLE 13. NOTICES**

Any Notice permitted or required under this Agreement shall be given in writing and delivered by first class mail, postage prepaid, or by facsimile, or by other electronic means, to the other Parties at the addresses below. Each Party shall have the affirmative obligation to notify the other Party of any change of address.

TraPac, Inc.  
Attention: General Manager  
9834 New Berlin Road  
Jacksonville, FL 32226

SSA Cooper, LLC  
c/o Carrix, Inc.  
Attention: General Counsel  
131 SW Klickitat Way  
Seattle, Washington 98134

**ARTICLE 14. INVALIDITY AND SEVERABILITY**

Each term and provision of this Agreement shall be valid and enforceable to the full extent provided by law. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provision not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

**ARTICLE 15. COUNTERPARTS**

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

[Signatures on Following Pages]



TraPac – SSA Cooper  
Marine Terminal Discussion Agreement  
FMC Agreement No. \_\_\_\_\_

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first set forth above.

TRAPAC, INC.

SSA COOPER, LLC

By: \_\_\_\_\_

*Frank N. Pisano*

Name: \_\_\_\_\_

*Frank N. Pisano*

Title: \_\_\_\_\_

*President*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TraPac – SSA Cooper  
Marine Terminal Discussion Agreement  
FMC Agreement No. \_\_\_\_\_

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first set forth above.

TRAPAC, INC.

SSA COOPER, LLC

By: \_\_\_\_\_

Name:

Title:

By:  \_\_\_\_\_

Name:

JOHN A. WALSH

Title:

REGIONAL V.P.